



The case is no longer in an early stage. Discovery is over and the facts are fully developed. Defendants are not trying to circumvent page limits but are attempting to avoid a costly and unnecessary trial in this matter. As set forth below, there is ample good cause for permitting another summary judgment, namely judicial economy.

## II. ARGUMENT & AUTHORITIES

A. **Local Rule 56.2 states that “Unless otherwise directed by the presiding judge, or permitted by law, a party may file no more than one motion for summary judgment.”**

While case law has not specifically defined the phrase “permitted by law,” it has addressed the policy behind Local Rule 56.2. The Rule prevents the once prevalent practice of circumventing summary judgment motion page limits by dividing arguments among several motions. *Home Depot U.S.A., Inc. v. Nat’l Fire Ins. Co. of Hartford*, No. 3:06-CV-0073-D, 2007 WL 1969752, at \*2 (N.D. Tex. June 27, 2007).

B. **Judge Solis’ Prior ruling sets forth the likelihood of another Motion for Summary Judgment**

In his Ruling on the prior Motion for Summary Judgment, Judge Solis noted throughout that discovery was still pending and that the case was in its early stage.

**At this point**, the Court finds that Chilly Dil's breach of contract claim does not fail for lack of a valid contract and does not reach the argument regarding whether the 2011 Agreement is relevant to the present dispute. (Doc. 98, p. 7, emphasis added).

The Court **cannot yet determine** whether JetPay holds money that in equity and good conscience belongs to Chilly Dil. (Doc. 98, p. 9, emphasis added).

Chilly Dil has overstated the amount and strength of its evidence, but there is some evidence of a contract and possible interference by JetPay. Because this case is still relatively early on in the discovery period, the Court agrees that **it would be premature to dismiss this** claim based on the limited evidence before the Court. (Doc. 98, p. 11, emphasis added).

Finally and most importantly, Judge Solis found:

As discussed above, **issues of fact remain regarding whether the 2011 Agreement is a binding contract relevant to this dispute.** (Doc. 98, p. 13, emphasis added).

It is the present pending motion that seeks to answer Judge Solis' concerns that could possibly, but did not, arise during discovery. After the ruling, the deposition of Plaintiff's 30(b)(6) was taken where Plaintiff admitted to signing a separate contract that she did not sue upon with another JetPay UK company. Plaintiff also admitted to not being able to offer any damage theory. In addition, facts have come out showing Plaintiff has no damages.

The goal is not to take a second bite at the apple, but to address the prior concerns of the Court with the facts discovered since the prior ruling and with the new complaint Plaintiff filed.

**C. The Parties Contemplated Another Motion for Summary Judgment**

Ironically, Plaintiff argues on one hand that the Court forbids any further Motions for Summary Judgment. On the other hand, Plaintiff filed its Motion to move deadlines in this case and Plaintiff included the dispositive motion deadline in said motion. Why would a dispositive motion be on a scheduling order from Plaintiff after the first motion for summary judgment if such was not contemplated by all parties. (Doc. 72, p. 1).

**D. Judicial Efficiency is served by permitting another MSJ**

The pending Motion for Summary Judgment would alleviate the need for a long, complicated, and confusing trial. Plaintiff has another contract with a non-party entity from which Plaintiff has been paid a significant amount of money. This is the party, if any, that Plaintiff would have a case against. Plaintiff has no damages it can prove against the current Defendants and allowing Plaintiff to drag a jury away from their jobs and family to offer no damages does not promote judicial economy.

**PRAYER**

**WHEREFORE, PREMISES CONSIDERED,** Defendants pray that their Motion for Leave to File Under Seal and Motion for Leave to File Under LR 56.2 Defendants' Motion for Summary Judgment on First Amended Complaint, Brief in Support, and Appendix be granted, and for all such other and further relief to which they may be justly entitled.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 8, 2016, I electronically submitted the foregoing document with the clerk of the court for the U.S. District Court for the Northern District of Texas, using the electronic filing system of the court. The electronic case files system sent a “Notice of Electronic Filing” to the following individuals who have consented in writing to accept this Notice as service of this document by electronic means:

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